

## **EXHIBIT E**

**In The Matter Of:**

*Eli Mistovich, Jr. v.  
Elizabeth Bowden, et al.*

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*Alison Leaton*

*Vol. 1, September 29, 2005*

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*Professional Court Reporters*

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**Word Index included with this Min-U-Script®**

[1] A: No.  
[2] Q: And when was the last time you were employed?  
[3] A: June.  
[4] Q: June of 2005?  
[5] A: Yes.  
[6] Q: Okay. And who were you employed by then?  
A: Spire.  
[7] Q: Is that a company?  
A: Yes.  
[8] Q: And how do you spell that?  
A: S-p-i-r-e.  
[9] Q: And where is Spire located?  
A: Dorchester.  
[10] Q: And what is the business of the Spire?  
A: Marketing and printing.  
[11] Q: And how long did you work for Spire before June of 2005?  
A: Ten months.  
[12] Q: And what was your position?  
A: Human Resources manager.  
[13] Q: And were you an employee of Spire?  
A: Yes.  
[14] Q: And why did you leave Spire?

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[1] Services?  
[2] A: It was a contract. I left for Spire.  
[3] Q: Okay. Were you a contractor, independent contractor, for Boston Financial Services?  
[4] A: I was working there through Winter, Wyman — or, excuse me, Pappas & Pappas.  
[5] Q: And before Boston Financial where were you employed?  
A: MBCR.  
[6] Q: Okay. And you were a contract employee at — or a contract, an independent contractor, at MBCR, correct?  
A: Yes.  
[7] Q: Did you work full time at MBCR? In other words —  
A: Yes.  
[8] Q: Okay. What dates were you employed at MBCR as an independent contractor?  
A: Approximately September — I don't remember the date I started in September of '03 until sometime in April of '04.  
[9] Q: And did you have a particular job assignment at MBCR?  
A: I was a recruiter.

[1] A: Small family-owned business.  
[2] Q: Well —  
[3] A: I couldn't do my job because of that.  
[4] Q: Could you explain that?  
[5] A: I was the only member of the leadership team that wasn't related.  
[6] Q: Okay. Were you asked to leave?  
A: No.  
[7] Q: Did you resign voluntarily?  
A: Yes.  
[8] Q: And before — prior to going to work for Spire, what was your next previous employment?  
A: Boston Financial Data Services.  
[9] Q: And what did you do at Boston Financial Data Services?  
A: I was a recruiter.  
[10] Q: And how long did you work for Boston Financial Data Services?  
A: Approximately two months.  
[11] Q: And would that have been between June and August of two thousand — or between June and August of 2004?  
A: Approximately, yes.  
Q: Why did you leave Boston Financial

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[1] Q: Okay. And what were your duties as a recruiter?  
A: To hire and fill open positions.  
Q: Did this include both management positions and the labor force?  
A: Yes.  
Q: How did you come to work for MBCR?  
A: Winter, Wyman referred my resume to them, and I interviewed with Liz Bowden.  
Q: Did you know Liz Bowden before your interview?  
A: No.  
Q: I'm going to show you a document that was produced by — by MBCR, actually, in this case, Bates stamped 26 through 28.  
A: (Reviewing document)  
Q: And do you recognize that document, Ms. Leaton?  
A: Yes.  
MR. TEAGUE: Off the record.  
(Discussion off the record)  
Q: And is that a copy of a resume you submitted to MBCR?  
A: It's a copy of a resume that Winter, Wyman

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[1] for more diversity in the MBCR workforce?  
[2] A: Not that I recall.  
[3] Q: And how about prior to March of 2004, do  
[4] you recall having any discussions with Ms. Bowden on  
[5] that subject?  
[6] A: No.  
[7] Q: Before March of 2004 do you recall  
[8] receiving information from Ms. Bowden or any other  
[9] MBCR employee about criticism of MBCR for lack of  
[10] minorities in its workforce?  
[11] A: No.  
[12] Q: Prior to March of 2004, did you have any  
[13] discussions with members of the diversity committee  
[14] concerning the hiring of minorities in the  
[15] workforce?  
[16] A: Not that I recall.  
[17] Q: And prior to March of 2004, had you ever  
[18] received any complaints or information about Eli  
[19] Mistovich's practice of hiring minorities either  
[20] while at Amtrak or MBCR?  
[21] A: Not that I recall.  
[22] MR. TEAGUE: If I could just have Exhibit 1  
[23] back, please. Thanks.  
[24] Q: Prior to March of 2004, had you had any

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[1] A: Yes.  
[2] Q: Okay. And after that was there a need  
[3] for — well, strike that. Did the two individuals  
[4] that were hired in November of 2003, did that fill  
[5] the open requisition?  
[6] A: No.  
[7] Q: Were there more trackmen needed?  
[8] A: Yes.  
[9] Q: And do you remember how many more?  
[10] A: No.  
[11] Q: And — okay. What happened next after you  
[12] made these job offers and there were still positions  
[13] to be filled that you remember?  
[14] A: I don't recall.  
[15] Q: Did you have discussion with Mr. Mistovich  
[16] about the need for additional interviews?  
[17] A: Yes.  
[18] Q: Okay. And did you agree that additional  
[19] interviews would be conducted?  
[20] A: Yes.  
[21] Q: Okay. And do you remember that discussion?  
[22] A: Somewhat.  
[23] Q: Where did it take place?  
[24] A: After the interviews on the 24th and -5th

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[1] discussions with Elizabeth Bowden about remarks that  
[2] had been made to her by a Boston City Councilor by  
[3] the name of Charles Turner concerning minorities in  
[4] MBCR's workforce?  
[5] A: No.  
[6] Q: Had you ever met with a Boston City  
[7] Councilor named Turner?  
[8] A: No.  
[9] Q: Prior to March of 2004, did any officers or  
[10] employees of MBCR inform you that MBCR had been  
[11] criticized by the Boston City Councilor named Turner  
[12] about its minority hiring practice?  
[13] A: Not to my recollection.  
[14] Q: After your interviews of November 24th and  
[15] 25th and you and Mr. Mistovich had agreed on the  
[16] candidates to be hired — I believe you said there  
[17] were two?  
[18] A: That I recall.  
[19] Q: That you recall — how were the job offers  
[20] communicated to those individuals?  
[21] A: I contacted them by telephone and made the  
[22] offer over the phone.  
[23] Q: Do you recall if the offers that were made  
[24] were accepted?

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[1] of November.  
[2] Q: Okay. And it was at the interview place,  
[3] that Somerville location?  
[4] A: I don't know if it was there or over the  
[5] phone at a later date, but approximately around  
[6] those dates.  
[7] Q: What do you recall being said by you and  
[8] him in the conversation?  
[9] A: We decided that as he anticipated  
[10] additional requisitions being approved after the  
[11] first of the year, that we would wait and interview  
[12] after the first of the year with any new additional  
[13] requisitions approved as well.  
[14] Q: Okay. And were additional requisitions  
[15] approved after the first of the year?  
[16] A: I believe so.  
[17] Q: So you remember at that point after the  
[18] first of the year about how many trackmen could be  
[19] hired through these open requisitions?  
[20] A: I don't know.  
[21] Q: Was it more than ten, if you remember?  
[22] A: No.  
[23] Q: Okay. And then — I take it, after the  
[24] first of the year you received additional open

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[1] A: I didn't hear any information back.  
[2] Q: Okay. So of the ten people scheduled for  
[3] interviews on March — well, of the five people  
[4] scheduled on March 4th only two showed for  
[5] interviews; is that correct?  
[6] A: That's correct.  
[7] Q: And on March 5th it appears that all five  
[8] showed up; is that correct?  
[9] A: That's correct.  
[10] Q: At the end of the day on March 5th, what  
[11] happened?  
[12] A: I don't recall.  
[13] Q: Well, did you meet with Mr. Mistovich and  
[14] discuss whether to hire any of the individuals  
[15] interviewed?  
[16] A: Yes.  
[17] Q: And do you recall whether a decision was  
[18] made?  
[19] A: I know we talked about making an offer to  
[20] Frank Sarica, and other than that I don't recall —  
[21] Q: Okay.  
[22] A: — about these specific candidates.  
[23] Q: Was there any discussion on March 5th about  
[24] the need to conduct additional interviews?

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[1] A: (Reviewing document)  
[2] Q: And was he one of the resumes that you  
[3] discussed with Mr. Mistovich?  
[4] A: Yes.  
[5] Q: And what do you recall being said in your  
[6] discussion with Mr. Mistovich about Mr. Morgan?  
[7] A: I indicated that he had a CDL, which is one  
[8] of Eli's preferred requirements/qualifications, he  
[9] had a very good work record; and that based on the  
[10] people that we interviewed that day, he was more  
[11] qualified than many of the people we had interviewed  
[12] that day.  
[13] Q: And what did Mr. Mistovich say?  
[14] A: He said he didn't want to interview him,  
[15] and I said, "Why don't you want to interview him?"  
[16] Q: And then what did he say?  
[17] A: "I haven't had good luck with people like  
[18] that."  
[19] Q: Okay. And what did you say?  
[20] A: I said, "You haven't had good luck with  
[21] white people either."  
[22] Q: Well, what led you to say that?  
[23] A: Based on what he said.  
[24] Q: When he said he didn't have good luck with

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[1] A: Yes.  
[2] Q: And what do you recall about that?  
[3] A: That we decided we needed to interview  
[4] additional candidates based on the outcome of these  
[5] interviews.  
[6] Q: Okay. Did you make a determination of how  
[7] many additional candidates would need to be  
[8] interviewed?  
[9] A: Not to my recollection.  
[10] Q: And at the meeting on March 5th, did you  
[11] talk to Mr. Mistovich about what additional  
[12] candidates would be interviewed?  
[13] A: Yes.  
[14] Q: And what do you recall you saying and him  
[15] saying?  
[16] A: I had resumes of people that I had already  
[17] sent him and went back through those resumes and  
[18] reviewed each resume with him as to why he didn't  
[19] select them.  
[20] Q: Okay. And one of those resumes was of a  
[21] gentleman named Marvin Morgan; is that correct?  
[22] A: That's correct.  
[23] Q: And I'm going to show you what we marked as  
[24] Exhibit 2 in this proceeding.

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[1] people like that, what did you understand him to  
[2] mean?  
[3] A: Sorry. Let me back — he asked me — he  
[4] said, "I haven't had good luck with people like  
[5] that," and I said, "What do you mean by that?" And  
[6] he said, "I just haven't had good luck with people  
[7] like that." Based on that, I said, "You haven't had  
[8] good luck with white people either."  
[9] Q: Well, was Mr. Morgan black?  
[10] A: I didn't know.  
[11] Q: Well, why did you ask why he didn't have  
[12] good luck with white people either?  
[13] A: Because based on his response to me, I felt  
[14] he was making the assumption because of his name and  
[15] his address that he must have been black.  
[16] Q: You assumed that Mr. Morgan was black  
[17] because of his name and address?  
[18] A: I did not. I didn't know.  
[19] Q: You made the assumption that — the  
[20] determination that Mr. Mistovich had made that  
[21] assumption?  
[22] A: Yes.  
[23] Q: What is there about the name "Marvin F.  
[24] Morgan, Jr.," that would have led Mr. Mistovich to

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[1] conclude that he was black?  
 [2] **A:** It's the address more than anything else.  
 [3] **Q:** So it was not the name?  
 [4] **A:** It was the address.  
 [5] **Q:** Oh, okay. Before you said it was the name.  
 [6] Did the name have anything to do with suggesting  
 [7] that he was black?  
 [8] **A:** I don't recall.  
 [9] **Q:** The address is 194 Normandy Street,  
 [10] Dorchester, Massachusetts. What is there about that  
 [11] address that would lead it — lead you to conclude  
 [12] that Mr. Mistovich assumed he was black?  
 [13] **A:** Because it was a predominantly black area  
 [14] in the city.  
 [15] **Q:** What is?  
 [16] **A:** Dorchester.  
 [17] **Q:** The entire Dorchester neighborhood?  
 [18] **A:** Yes.  
 [19] **Q:** Or is it the street "Normandy Street"?  
 [20] **A:** I don't know where that street is.  
 [21] **Q:** You have no idea where it's located?  
 [22] **A:** No.  
 [23] **Q:** You just thought most people from  
 [24] Dorchester are black; is that an assumption that you

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[1] And I also told him in that same  
 [2] conversation that I would not make him hire a  
 [3] minority whom I didn't feel was qualified for the  
 [4] position or as qualified for the position as someone  
 [5] who was not a minority, and that if — otherwise, if  
 [6] they were, I would go to the mat.  
 [7] **Q:** What did he say?  
 [8] **A:** He said, "Well," — to the best of my  
 [9] recollection, he said, "I don't" — "I can't win  
 [10] this argument. I don't see the point in arguing it.  
 [11] I'm not getting in a discussion that I'm not going  
 [12] to win."  
 [13] **Q:** Well, what was there about his work record  
 [14] that you thought was good? I mean, he had a CDL —  
 [15] **A:** He had a CDL and he had almost ten years  
 [16] with the same company. So he had longevity at one  
 [17] company and had been consistently employed for a  
 [18] long period of time.  
 [19] **Q:** Are you talking about the first, "Jet a Way  
 [20] Disposal and Recycle"?  
 [21] **A:** Yes.  
 [22] **Q:** But it appears that he had left their  
 [23] employment in 2002; is that correct?  
 [24] **A:** Correct. According to the document, yes.

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[1] made?  
 [2] **A:** No.  
 [3] **Q:** Well, then, I'm a little confused. He's  
 [4] from Dorchester. Mr. Mistovich said, "I haven't had  
 [5] good luck with people like that." What is it that  
 [6] you led you to conclude he was talking about Mr.  
 [7] Morgan's race?  
 [8] **A:** Because when I said, "You haven't had good  
 [9] luck with white people either," his response to me  
 [10] was, "Well, I've had less" — "I've had more  
 [11] problems with people like that than with white  
 [12] people."  
 [13] **Q:** That's words out of Mr. Mistovich's mouth?  
 [14] **A:** To the best of my recollection, yes.  
 [15] **Q:** You're under oath now. That's what you're  
 [16] saying he said.  
 [17] **A:** To the best of my recollection, yes.  
 [18] **Q:** What did you say?  
 [19] **A:** I told him that it was illegal to  
 [20] discriminate against candidates based on their race,  
 [21] and that we needed to interview him. He's as  
 [22] qualified, and that if he does well on the interview  
 [23] process and his references pan out, that we should  
 [24] make him an offer.

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[1] **Q:** Do you have any information as to why —  
 [2] what his employment was as of the time of the  
 [3] interview?  
 [4] **A:** I don't recall.  
 [5] **Q:** Do you recall from what source you got Mr.  
 [6] Morgan's resume?  
 [7] **A:** By fax.  
 [8] **Q:** Do you recall if you got it from Mr. Morgan  
 [9] himself?  
 [10] **A:** Yes.  
 [11] **Q:** Did Mr. Mistovich say anything about the  
 [12] fact that it appeared that Mr. Morgan had been  
 [13] unemployed after 2002?  
 [14] **A:** Not to my recollection.  
 [15] **Q:** Do you recall Mr. Mistovich mentioning it  
 [16] did not appear that Mr. Morgan had any construction  
 [17] experience?  
 [18] **A:** Not to my recollection.  
 [19] **Q:** Do you see anything on his resume that  
 [20] indicates that there is construction experience in  
 [21] Mr. Morgan's background?  
 [22] **A:** No.  
 [23] **Q:** What else did you say during the course of  
 [24] this discussion about Mr. Morgan?

[1] A: I actually — I think they were because  
[2] they usually were.  
[3] Q: Let me go back to your discussion with Mr.  
[4] Mistovich on March 5th about Mr. Morgan. Was there  
[5] a member of the diversity committee present during  
[6] that discussion?  
[7] A: No.  
[8] Q: And you don't recall if someone was there  
[9] from the diversity committee during the earlier  
[10] interviews; is that correct?  
[11] A: I don't recall.  
[12] Q: Okay. What do you recall saying to Mr.  
[13] Mistovich about Mr. Morgan, and what do you recall  
[14] him saying?  
[15] A: At what time are you asking?  
[16] Q: After the interviews, when you were  
[17] determining whether to make any job offers.  
[18] A: To my recollection I think I said, "He did  
[19] very well. He was an hour early," and that "We  
[20] should check his references."  
[21] Q: And what, if anything, did Mr. Mistovich  
[22] say?  
[23] A: "Fine."  
[24] Q: I'm sorry?

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[1] Q: And then Mr. Morgan was hired after the  
[2] interviews of March 11th, correct?  
[3] A: Yes.  
[4] Q: And that would make a total of six, by my  
[5] primitive arithmetic, correct?  
[6] A: Yes.  
[7] Q: Do you recall whether there were other  
[8] trackmen hired other than the six that appear on  
[9] these exhibits?  
[10] A: Not to my recollection.  
[11] Q: And do you recall after Mr. Morgan was  
[12] hired that the open requisition for trackmen was  
[13] filled?  
[14] A: I don't recall.  
[15] Q: Do you have any recollection of whether  
[16] there were additional interviews scheduled for  
[17] trackmen after March 11th, 2004?  
[18] A: Not that I recall.  
[19] Q: Do you recall how you got to the Somerville  
[20] facility for the interviews on March 11th, 2004?  
[21] A: I drove.  
[22] Q: Do you have any recollection of Mr.  
[23] Mistovich driving you to the facility from a medical  
[24] appointment that you had?

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[1] A: "Fine."  
[2] Q: Okay. And was a job offer made?  
[3] A: Yes.  
[4] Q: Did Mr. Mistovich express any reservation  
[5] or objection to making an offer to Mr. Morgan?  
[6] A: Not to my recollection.  
[7] Q: Was Mr. Morgan hired?  
[8] A: Yes.  
[9] Q: Were any of the two individuals on Exhibit  
[10] 22 made — was an offer made to either of those?  
[11] A: I don't remember. My notes would indicate  
[12] that no.  
[13] Q: According to the notes on Exhibit 19 —  
[14] which I believe you said were not yours, is that  
[15] correct?  
[16] A: Yes, those are not mine.  
[17] Q: — do you have a recollection that after  
[18] the November interviews there were at least two  
[19] people hired?  
[20] A: Yes.  
[21] Q: Okay. And then according to your notes on  
[22] Exhibit 23, it appears there were three additional  
[23] people hired?  
[24] A: Yes.

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[1] A: Oh, yes, sort of. I think, maybe.  
[2] Q: Okay. Let me see if I can refresh your  
[3] recollection. Mr. Mistovich has testified that his  
[4] recollection was that on March 11th you had some  
[5] difficulty with scheduling interviews because you  
[6] had a medical appointment that he had picked you up  
[7] from?  
[8] A: That sounds right.  
[9] Q: Okay. And do you recall that at the  
[10] conclusion of the interviews he drove you from the  
[11] Somerville facility back to the Boston office?  
[12] A: That sounds right.  
[13] Q: Do you recall having any discussions or  
[14] conversations with Mr. Mistovich either on the ride  
[15] to the Somerville facility or the ride back to your  
[16] Boston office after the interviews were over?  
[17] A: Not that I recall.  
[18] Q: After March 5th and before March 11th, did  
[19] you have any further discussions with Mr. Mistovich  
[20] about Marvin Morgan?  
[21] A: Not that I recall.  
[22] Q: Now, at some point did you contact  
[23] Elizabeth Bowden concerning the conversation that  
[24] you had with Mr. Mistovich about Marvin Morgan on

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[1] March 5th, 2004?  
[2] A: Yes.  
[3] Q: And when did you first contact Ms. Bowden?  
[4] A: I don't recall the specific date.  
[5] Q: Do you recall whether it was on March 5th  
[6] after you had your discussion?  
[7] A: Probably not. Probably the next day,  
[8] maybe.  
[9] MS. RUBIN: Don't speculate.  
[10] THE WITNESS: Okay.  
[11] Q: Was it, your discussion with Ms. Bowden,  
[12] before March 11th?  
[13] A: Yes.  
[14] Q: Okay. And was this a telephone discussion?  
[15] A: No.  
[16] Q: Face-to-face discussion?  
[17] A: Yes.  
[18] Q: Was there more than one discussion between  
[19] March 5th and March 11th?  
[20] A: I don't recall.  
[21] Q: Okay. Where did the discussion take place?  
[22] A: In her office.  
[23] Q: Where was her office?  
[24] A: Oh, sorry. South Street.

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[1] Q: Why not?  
[2] A: I don't know. I just didn't.  
[3] Q: What, if anything, did Ms. Bowden say?  
[4] A: She thanked me for letting her know about  
[5] the situation.  
[6] Q: Anything else you recall Ms. Bowden saying?  
[7] A: Not that I recall.  
[8] Q: Did she suggest you take any action?  
[9] A: Not that I recall.  
[10] Q: And other than that conversation prior to  
[11] interviewing Mr. Morgan on March 11th, did you have  
[12] any other communications with Ms. Bowden concerning  
[13] this matter?  
[14] A: Not that I recall.  
[15] Q: Did you have any communications with any  
[16] members of the diversity committee concerning this  
[17] issue?  
[18] A: Not that I recall.  
[19] Q: Did you have any discussions with any other  
[20] officers or employees of MBCR between March 5th and  
[21] March 11th, 2004 —  
[22] A: Not that —  
[23] Q: — concerning your discussion with Eli  
[24] Mistovich?

[1] Q: Basically where yours was?  
[2] A: Yes.  
[3] Q: And what did you say and what did Ms.  
[4] Bowden say during this discussion before March 11th?  
[5] A: I let her know that a discussion had taken  
[6] place with Mr. Mistovich regarding this candidate,  
[7] and that the situation was under control but that  
[8] she needed to be aware of it.  
[9] Q: Well, did you elaborate on what the  
[10] situation was?  
[11] A: Yes. I told her about the conversation I  
[12] had with Eli — excuse me — Mr. Mistovich, and that  
[13] we were interviewing the candidate, and I had  
[14] communicated to Mr. Mistovich that if all went well,  
[15] we would hire the candidate, and I told her all of  
[16] that.  
[17] Q: Why did you inform Ms. Bowden of this?  
[18] A: It's my obligation — it was my obligation  
[19] to the organization to communicate anything that I  
[20] thought was discriminatory or of any other kind of  
[21] harassment-issue type thing to my superior.  
[22] Q: Did you tell Mr. Mistovich you were going  
[23] to inform Ms. Bowden of this?  
[24] A: No.

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[1] A: Not that I recall.  
[2] Q: Okay. On March 11th or any time prior  
[3] thereto, did you tell Mr. Mistovich of what you had  
[4] informed Ms. Bowden of?  
[5] A: No.  
[6] Q: Was there a reason why you didn't tell Mr.  
[7] Mistovich?  
[8] A: It wasn't necessary to tell him.  
[9] Q: You didn't think he should know that you  
[10] made that kind of report to the head of HR of MBCR?  
[11] A: Yes.  
[12] Q: Why was that?  
[13] A: It wasn't relevant to let him know. It  
[14] wasn't necessary.  
[15] \*Q. Fair to say you didn't want him to be able  
[16] to talk to Ms. Bowden about his comments; is that  
[17] correct?  
[18] \*MS. RUBIN: Objection.  
[19] \*A. No.  
[20] Q: After March 11th — well, strike that.  
[21] On March 11, 2004, do you recall having —  
[22] MS. RUBIN: Before you start asking the  
[23] question, can we take a break?  
[24] MR. TEAGUE: Sure.

[1] (Brief recess)  
[2] MR. TEAGUE: Can you read the last question  
[3] and answer.  
[4] \*(Record read)  
[5] BY MR. TEAGUE:  
[6] Q: Let me show you Mr. Morgan's resume again.  
[7] It's Exhibit 2. Is there anything on Mr. Morgan's  
[8] resume that indicates to you that he had any  
[9] railroad work experience?  
[10] A: No.  
[11] Q: Is there anything that indicates he had any  
[12] hoisting experience?  
[13] A: He's got "Hydraulic heavy equipment  
[14] operator."  
[15] Q: You consider that to be hoisting experience  
[16] for a trackmen?  
[17] A: To my knowledge.  
[18] Q: Is there anything on his resume that  
[19] indicated he did any heavy bending or lifting during  
[20] his work experience?  
[21] A: Yes.  
[22] Q: What's that?  
[23] A: At the Delta Airlines position when he was  
[24] unloading and loading cargo.

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[1] I take it, the top one is your reply; is that  
[2] correct?  
[3] A: That's correct.  
[4] Q: Prior to Ms. Bowden sending you this  
[5] e-mail, which appears to be April — March 11 at  
[6] 2:14 p.m., had you had a conversation with her?  
[7] A: Yes, as previously discussed.  
[8] Q: Well, I don't mean — I mean on March 11.  
[9] I should narrow my question. Was there a  
[10] conversation with Ms. Bowden prior to 2:14 on March  
[11] 11 with Ms. Bowden?  
[12] A: I don't recall.  
[13] Q: Do you recall replying to Ms. Bowden's  
[14] e-mail?  
[15] A: Yes.  
[16] Q: And in the first paragraph of your e-mail,  
[17] the second sentence, you said, "So in that  
[18] conversation I went over additional resumes that I  
[19] screened as 'yeses,' and he did not want to  
[20] interview a person who was based on name and where  
[21] he lived being Eli's assumption that he was black."  
[22] And, again, I'll ask you, why did you mention the  
[23] fact that Mr. Morgan's name would have led Mr.  
[24] Mistovich to the assumption that he was black?

[1] Q: Okay. That was back in 1990, correct?  
[2] A: Yes.  
[3] Q: Okay.  
[4] A: As well as he was working in a warehouse  
[5] after that. He retrieved merchandise for shipping  
[6] and stocked merchandise in the warehouse facility.  
[7] Q: Okay. May I see Mr. Morgan's resume. You  
[8] do recall on March 11 that there was a member of the  
[9] diversity committee present, correct?  
[10] A: Yes.  
[11] Q: But you don't recall the identity of the  
[12] person?  
[13] A: No.  
[14] Q: Okay. Let me direct your attention to  
[15] March 11. After the interviews had taken place, did  
[16] you have a discussion with Ms. Bowden concerning Mr.  
[17] Morgan and Mr. Mistovich?  
[18] A: Not that I recall specifically.  
[19] Q: Okay. Let me show you a document marked as  
[20] Exhibit 5, and do you recognize that document, Ms.  
[21] Leaton?  
[22] A: Yes.  
[23] Q: And that's a — two e-mails. The bottom  
[24] part is one from Ms. Bowden to you of March 11, and,

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[1] A: It's traditionally in some cases an  
[2] African-American name based on —  
[3] Q: What is? Marvin Morgan?  
[4] A: Morgan. In often cases.  
[5] Q: You believe the name "Morgan" would  
[6] indicate the race of a candidate?  
[7] A: Not necessarily.  
[8] Q: Okay. Well, let me ask you. What do you  
[9] mean "the name" —  
[10] A: I think Marvin more than anything.  
[11] Q: The first name Marvin is an indication that  
[12] a person is black; is that your testimony?  
[13] A: It can be.  
[14] Q: Well, the name "Joseph" could be a black  
[15] person's name, could it not?  
[16] A: Yes.  
[17] Q: What is there about the name Marvin that  
[18] suggests to you that another person could determine  
[19] his race?  
[20] A: It wasn't just the name. It was the name  
[21] and the address, as I indicated in this e-mail and  
[22] in prior statements to you.  
[23] Q: Well, I thought you indicated previously it  
[24] wasn't the name. It was the address. Now, you're

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[1] Q: Do you recall seeing that document before?  
 [2] A: Yes.  
 [3] Q: Okay. And when did you see this document?  
 [4] A: I don't recall.  
 [5] Q: Do you recall having an interview —  
 [6] MS. RUBIN: Can I just interrupt. The  
 [7] Exhibit 30 has more than one page, and the document  
 [8] you gave her is just one page.  
 [9] MR. TEAGUE: Oh, sorry. There is a second  
 [10] page.  
 [11] MS. RUBIN: I just want it to be clear.  
 [12] MR. TEAGUE: You're correct. Somehow that  
 [13] detached.  
 [14] Q: Take a look at the second page.  
 [15] A: (Reviewing document)  
 [16] Q: And, again, you say — my understanding of  
 [17] your testimony is you recall seeing Exhibit 30  
 [18] before?  
 [19] A: Yes.  
 [20] Q: Do you recall seeing it before this case  
 [21] started?  
 [22] A: Yes.  
 [23] Q: Okay. You have no recollection of when you  
 [24] saw this document, correct?

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[1] MS. RUBIN: Well, either it does or it  
 [2] doesn't. Don't guess.  
 [3] A: Yes.  
 [4] Q: It does?  
 [5] A: Uh-huh.  
 [6] Q: Okay. Is that an accurate — well, let me  
 [7] strike that.  
 [8] Let's go back to Exhibit 29.  
 [9] A: Uh-huh.  
 [10] Q: And on March 16th you replied to Ms.  
 [11] Bowden, "Liz, this looks accurate to me." Do you  
 [12] know what you were referring to?  
 [13] A: The attachment.  
 [14] Q: Okay. Did she send you a copy of this  
 [15] document, Exhibit 30?  
 [16] A: Yes.  
 [17] Q: And so then you reviewed it and then  
 [18] replied that the attachment looked accurate,  
 [19] correct?  
 [20] A: Yes.  
 [21] Q: Okay. And I'm just going to ask you about  
 [22] certain questions that appear on Exhibit 30. The  
 [23] third question states, "How many positions were  
 [24] being filled?" You see that?

[1] A: No.  
 [2] Q: Do you recall meeting with Ms. Bowden  
 [3] concerning — after March 11th concerning the e-mail  
 [4] that you had sent to her on March 11th?  
 [5] A: Yes.  
 [6] Q: And where did that meeting take place?  
 [7] A: Her office.  
 [8] Q: And who was present besides you and Ms.  
 [9] Bowden, if anyone?  
 [10] A: Beth Trowbridge.  
 [11] Q: And who was Beth Trowbridge?  
 [12] A: HR generalist.  
 [13] Q: Does she work under Ms. Bowden?  
 [14] A: Yes.  
 [15] Q: And what do you recall being said at the  
 [16] meeting of March — the meeting after March 11th?  
 [17] A: I don't recall anything specifically.  
 [18] Q: Okay. Was the subject of the meeting Mr.  
 [19] Mistovich's comments back on March 5th?  
 [20] A: Yes.  
 [21] Q: And if you take a look at Exhibit 30, does  
 [22] that refresh your recollection as to what, if  
 [23] anything, was said during that meeting?  
 [24] A: I guess so.

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[1] A: Yes.  
 [2] Q: Then there is two follow-ups: "How many  
 [3] people were interviewed? How many minority  
 [4] candidates interviewed?"  
 [5] A: Yes, uh-huh.  
 [6] Q: And you said, "Five trackmen," and "There  
 [7] were 11 interviews," correct?  
 [8] A: According to this, yes.  
 [9] Q: And "There were approximately 50 resumes  
 [10] reviewed." Your recollection, your memory of  
 [11] events, was better at the time of this interview  
 [12] than it is now; is that correct?  
 [13] A: Given it was a year and a half ago, yes.  
 [14] Q: Okay. Now, about two paragraphs down, Ms.  
 [15] Bowden states a question: "What specifically did  
 [16] Eli say regarding the address and that he assumed  
 [17] that people were black? Did he specifically say,  
 [18] quote, black, close quote?" And you said, "Why  
 [19] don't you want to interview this person?" And then  
 [20] it says, "So you're telling me you don't want to  
 [21] interview this person because you think they're  
 [22] black?" Those are your words; are they not?  
 [23] A: Yes.  
 [24] Q: And then it says, "Did you ask him what he

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[1] meant by "people like that"? And then your response  
[2] according to Ms. Bowden's note is, "What do you  
[3] mean? No answer given." And then you say, "It's  
[4] illegal Eli to do that, not interview people because  
[5] you think they're black?" And then it says,  
[6] "Greater percentage of people like that, again, did  
[7] you confirm that he meant blacks or all diversity?  
[8] Was there any room for misinterpretation?" And then  
[9] you said, "No confirmation." Do you recall that?  
[10] A: Not specifically, but...  
[11] Q: But you had indicated to Ms. Bowden in your  
[12] e-mail of March 16th that that was an accurate  
[13] summary of your meeting?  
[14] A: Yes.  
[15] Q: Okay. So do you recall other than what's  
[16] stated here making any efforts to confirm that Eli,  
[17] Mr. Mistovich, meant blacks?  
[18] A: Not other than we've discussed prior.  
[19] Q: Okay. And then you said, "No room for  
[20] misinterpretation." Do you recall saying that?  
[21] A: Well, she asked me, "Was there any room for  
[22] misinterpretation?" And I said, "No."  
[23] Q: And there was no doubt in your mind that he  
[24] had meant to eliminate Mr. Morgan from the interview

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[1] Q: Well, if it wasn't Mr. Mistovich, who did  
[2] make the final decision to hire Mr. Morgan?  
[3] A: Well, based on the discussions that he and  
[4] I had prior, he knew it was not a negotiation if  
[5] everything went well with the interview and the  
[6] references.  
[7] Q: Did he say that to you?  
[8] A: No. Based on the other conversations we  
[9] had.  
[10] Q: Okay. Well, then, when you said, "The  
[11] hiring manager made the final decision," to Ms.  
[12] Bowden on March 16th, 2004, was that a correct  
[13] statement?  
[14] A: In 99 percent of the cases, yes.  
[15] Q: Well, you didn't say 99. You said, "The  
[16] hiring manager." She was referring to the seven  
[17] track positions, correct?  
[18] A: Correct.  
[19] Q: It was a specific question, "If all the  
[20] references of all seven were positive, who would  
[21] make the final decision?" And your answer was, "The  
[22] hiring manager," correct?  
[23] A: Yes.  
[24] Q: And you confirmed that those questions were

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[1] process because he was black?  
[2] A: No.  
[3] Q: Okay. Now, on the second page — and it's  
[4] detached on what you're looking at — it says, "What  
[5] did Eli say or do differently before, during or  
[6] after the interviews of minority candidates?" You  
[7] said, "No difference. When asked what he thought,  
[8] Eli said, 'Fine.'" That refers to Mr. Morgan; is  
[9] that correct?  
[10] A: Yes.  
[11] Q: "Of the 11 interviewed" or "How many of the  
[12] 11 interviewed are prospective hires?" You said,  
[13] "Seven," correct?  
[14] A: Uh-huh.  
[15] Q: "If the references of all seven are  
[16] positive, who would make the final decision?" And  
[17] you said, "The hiring manager" —  
[18] A: Uh-huh.  
[19] Q: — correct? You have to say "Yes."  
[20] A: Oh, sorry, yes.  
[21] Q: So is it fair to say that it was Eli  
[22] Mistovich that made the final decision to hire Mr.  
[23] Morgan?  
[24] A: I'm not sure.

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[1] accurate in your e-mail of March 16th, 2004; is that  
[2] correct?  
[3] A: Uh-huh.  
[4] Q: You have to say "yes."  
[5] A: Yes.  
[6] Q: Are you telling us now that that answer is  
[7] incorrect?  
[8] A: No.  
[9] Q: Okay. So it's fair to say as of March  
[10] 16th, 2004, you were aware that Ms. Bowden was  
[11] conducting an inquiry as to what had happened during  
[12] your conversation, correct?  
[13] A: Correct.  
[14] Q: And you were aware that this inquiry could  
[15] result in the termination of Mr. Mistovich's  
[16] employment, correct?  
[17] A: Potentially.  
[18] Q: As of March 16th, did you inform Mr.  
[19] Mistovich as to the report that you had made to Ms.  
[20] Bowden?  
[21] A: No.  
[22] Q: Between — well, let's go back a step.  
[23] Were you aware that Ms. Bowden had scheduled a  
[24] meeting with Mr. Mistovich on March 26th, 2004, to